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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/932,622

08/17/2001

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2001-5

6302

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01/14/2008

EXAMINER

MAHAFKEY, KELLY J

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

01/14/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/932,622

Applicant(s)

KOWALSKI, WILLIAM R.

Examiner

Kelly Mahafkey

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4,6-9,13,17,18,20,24 and 103-109 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4,6-9,13,17,18,20,24 and 103-109 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Applicant's amendments made 11/5/07 have been entered.
Claims 1-4, 6-9, 13, 17, 18, 20, 24, and 103-109 remain pending.

Claim Rejections - 35 USC § 112

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. It is noted that the rejection below was necessitated by amendments.

The previous 112 first paragraph rejections of claims 1-4, 6-9, 17, 18, 20, 24, and 103-109 due to the recitation "meat" or "live animal" has been withdrawn in light of applicant's amendments made 11/5/07.

Claims 1-4, 6-9, 13, 17, 18, 20, 24, and 103-109 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claims 1-4 and 107 -109 recite, "wherein solely said fish's membranes act to super-purify said smoke"; and claims 18 and 103-106 recite, "wherein solely water and said fish's membranes act to super-purify said smoke". While the specification has support to enable one of skill in the art to use both the water and the fish's membranes to purify smoke, applicant's specification does not enable one of skill in the art to use solely the fish's membranes to purify the smoke, as in the instantly claimed invention, the smoke must first pass through water, which as taught by applicant will super purify the smoke. Furthermore, it is unclear as to how one of skill in the art would use the invention wherein the smoke will be super-purified only by the water and the fish's membranes as other parts of the fish would also be expected to super-purify the gas.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. It is noted that the rejection below was necessitated by amendments.

Claims 1-4, 6-9, 13, 17, 18, 20, 24, and 103-109 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hisateru in view of Yamaoka et al. (US 5484619). The references and rejection are incorporated herein and as cited in the office action mailed November 2, 2006. Regarding applicant's newly added limitation, that solely the fish's membranes or solely the fish's membranes and the water solely act to super-purify the smoke, as all of the active method steps claimed are taught by the references of record and one of ordinary skill in the art would expect the same results as instantly claimed, including the same natural purification systems as instantly claimed, absent any clear and/or convincing arguments and/or evidence to the contrary.

Response to Arguments

Applicant's arguments filed November 5, 2007 have been fully considered but they are not persuasive.

Applicant argues that the references of record do not teach, "preventing smoke flavor from entering the meat of the fish". Applicant further argues that "preventing smoke flavor from entering the meat of the fish" is an unexpected result and a new function of the method as taught by Hisateru in view of Yamaoka. As previously stated, this argument is not convincing as all of the active method steps claimed are taught by the references of record and thus one of ordinary skill in the art would expect the same results as instantly claimed, absent any clear and/or convincing arguments and/or evidence to the contrary.

At the present time, applicant has submitted several prior art references which teach that it was known for fish meat to absorb smoke flavor when smoke is imparted to a fish. Applicant's argument is not convincing, as applicant does not show the references of record do not teach that the smoke flavor would be imparted into the fish meat. Furthermore, it is again noted by the examiner, that the same active method steps as instantly claimed are taught by the references of record, and as such it is unclear as to how, when performing the same active method steps one would arrive at two different results.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/
Primary Examiner
Group 1700

Kelly Mahafkey
Examiner
Art Unit 1794

